REMARKS

Applicants appreciate the thorough review of the present application as reflected in the Office Action mailed January 19, 2006. Applicants also appreciate the Examiner's indication that Claims 12, 25-27, 31, 33 and 35 are allowed and that Claims 18-20 would be allowable if rewritten in independent form. Applicants respectfully submit that the pending claims are in condition for allowance for at least the reasons discussed herein.

The Claims Are Patentable Over Howes

Claims 1-11, 13-17, 21-24, 28-30, 32, 34 and 36-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,324,177 to Howes (hereinafter "Howes"). Applicants respectfully submit that many of the recitations of these claims are neither disclosed nor suggested by the cited reference. For example, Claim 1 recites:

A method of assigning a port for a connection originated by one of multiple application instances, the multiple application instances executing on different data processing systems and utilizing a common network address, comprising:
providing an indication of available ports for the common network address to each of the different data processing systems executing the multiple application instances; and
selecting a port identified as available as the port for the connection utilizing the common network address.

Independent Claims 13, 38 and 44-47 contain similar recitations to the highlighted recitations. Applicants respectfully submit that at least the highlighted recitations of Claim 1 are neither disclosed nor suggested by the cited reference for at least the reasons discussed herein.

The Office Action points to the following portions of Howes as teaching many of the recitations of Claim 1 (*See* Office Action, page 3):

FIG. 1 is a block diagram illustrating a Local Director.RTM. that distributes outside connections to a group of physical machines 112 (also referred to as real machines) that implement several web sites. Several Clients are shown which may connect to the websites that are implemented. A Client 120 has an IP address A.A.A.1 and a Client 122 belongs to the same subnet and has an IP address A.A.A.2. Also, a Client 130 has an IP address B.B.B.1 and a Client 132 that belongs to the same subnet has an IP address B.B.B.2. Clients make connections to virtual machines that have virtual

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> IP addresses that are known to the Client. **Each port of each virtual machine is bound to one or more real ports on a real machine. When a new connection is requested for a virtual machine port, then one of the real machine ports that is bound to the virtual machine port is selected to handle the connection. The selection is made using a load balancing scheme or other distribution scheme that distributes connections among all of the real ports that are bound to the virtual machine port specified in the incoming SYN packet.**

See Howes, column 4, lines 27-45 (emphasis added). The cited portion of Howes states that a "virtual" port is bound to one or more "real" ports and upon request for a virtual port, one of the real ports is selected to handle the connection. The cited portion of Howes further states that conventional methods of load balancing or distribution may be used to distribute the connections. By definition, a virtual port must map to a real port or the system would not function. This in combination with choosing the real port using conventional methods does not disclose or suggest the recitations of Claim 1.

In particular, Claim 1 recites providing an indication of available ports... and selecting a port identified as available as the port for the connection... Nothing in the cited portion of Howes discloses or suggests the providing and/or selecting operations as recited in Claim 1 of the present application. In fact, the Office Action admits that Howes does not teach providing an indication as recited in Claim 1. In particular, the Office Action states:

> **Howes** does not explicitly teach providing an indicator for indicating the availability of the (virtual) ports to the client. It is noted that for TCP/IP communications, it is required that IP address and port ID of virtual server be known to the client before connection can be established (see column 4, lines 27-37).

See Office Action, page 3 (emphasis in original). Applicants respectfully submit that just because an IP address and port ID are known before the connection can be established, does not mean that <u>an indication of available ports are provided</u> as recited in Claim 1. Accordingly, Applicants respectfully submit that if Howes does not disclose providing the indication and selection based on the indication as stated in the Office Action (page 3), then Howes does not disclose or suggest many of the recitations of Claim 1.

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Accordingly, Applicants respectfully submit that independent Claims 1, 13, 38 and 44-47 are patentable over the cited references for at least the reasons discussed herein. Furthermore, the dependent claims are patentable at least per the patentability of the independent claims from which they depend.

Accordingly, nothing in Howes discloses or suggests many of the recitations of Claim 1 set out above. Furthermore, there is no motivation or suggestion to modify Howes as suggested in the Office Action. As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, **and cannot be resolved on subjective belief and unknown authority**. See *In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is improper, in determining whether a person of ordinary skill would have been led to this modification of the reference, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The Office Action states:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize any conventional means in Howes to indicate the available ports and common IP addresses for the virtual servers to the clients because it would have enabled establishing connections between clients and servers (see col 4, lines 36-37).

See Office Action, page 3. This motivation is, at most, a motivation based on "subjective belief and unknown authority," the type of motivation that was rejected by the Federal Circuit in *In re Sang-su Lee*. In other words, the Office Action does not point to any specific portion of the cited references that would induce one of skill in the art to modify Howes as suggested in the Office Action. If the motivation provided in the Office Action is adequate, then anything that would "enable establishing connections between clients and servers" would render a modification obvious. This cannot be the case. Accordingly, the statement in the Office Action with respect to modification of Howes does not adequately address the issue of motivation to combine as discussed in *In re Sang-su Lee*. Thus, it appears that the Office Action gains its alleged impetus or suggestion to modify Howes by hindsight reasoning informed by Applicants' disclosure,

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which, as noted above, is an inappropriate basis for modifying references. Furthermore, even if modified, Howes would not disclose or suggest many of the recitations of independent Claim 1

Accordingly, Applicants respectfully submit that independent Claims 1, 13, 38 and 44-47 are patentable over Howes for at these additional reasons. Furthermore, the dependent claims are patentable at least per the patentability of independent base Claims 1, 13, 38 and 44-47 from which they depend.

Many of the dependent claims are also separately patentable over the cited reference. For example, many of the dependent claims recite details of the providing and selecting steps of Claim 1. As discussed above, nothing in Howes discloses or suggests the providing and selecting steps of Claim 1. Thus, it follows that nothing in Howes discloses or suggests the details with respect to these steps. Accordingly, many of the dependent claims are separately patentable over Howes for at least these additional reasons.
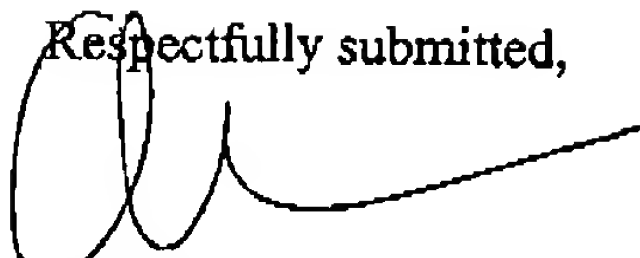
Furthermore, the Office Action takes Official Notice of several of the dependent claims. *See* Office Action, page 4. Applicants respectfully disagree that the recitations of Claims 8 and 10-11 would have been obvious to those skilled in the art. For example, the Office Action states that the recitations of Claim 8 are obvious as "it would have enabled the system to properly manage its resources." *See* Office Action, page 4. This statement does not make out a *prima facie* case of obviousness. Applicants respectfully request that, if the current rejections are maintained, the next Office Action point to some teaching that renders the recitations of Claims 8 and 10-11 obvious.

CONCLUSION

Applicants respectfully submit that pending claims are in condition for allowance for at least the reasons discussed above. Thus, allowance of the pending claims is respectfully requested in due course.

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